



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,249	04/13/2004	Brian Keith Long	000479.00124	5753
22909 7590 02/23/2010 BANNER & WITCOFF, LTD. 1100 13th STREET, N.W. SUITE 1200 WASHINGTON, DC 20005-4051				
EXAMINER				
WEBER, JONATHAN C				
ART UNIT		PAPER NUMBER		
3641				
MAIL DATE		DELIVERY MODE		
02/23/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/824,249

Applicant(s)

LONG, BRIAN KEITH

Examiner

Jonathan C. Weber

Art Unit

3641

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 52-61, 64-71, 74 and 80-87 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 52-61, 64-71, 74 and 80-87 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ ~~Notice of Informal Patent Application~~
- 6) ☐ Other: _____

DETAILED ACTION

1. In view of the appeal brief filed on 24 November 2009, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Michael J. Carone/

Supervisory Patent Examiner, Art Unit 3641.

Response to Amendment

The amendments to the claims filed on 24 July 2009 after the final rejection will be examined on the merits. Claims 1-51, 62-63, 72-73, & 75-79 are cancelled, no claims have been added, and claims 52-61, 64-71, 74, & 80-87 are currently pending in the application.

Claim Rejections - 35 USC § 112

The claim limitation, in claim 74, "coupling means for" uses the phrase "means for" or "step for", but it is modified by some structure, material, or acts recited in the claim. It is unclear whether the recited structure, material, or acts are sufficient for performing the claimed function which would preclude application of 35 U.S.C. 112, sixth paragraph, because coupling is a specific type of means for joining.

If applicant wishes to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to amend the claim so that the phrase "means for" or "step for" is clearly **not** modified by sufficient structure, material, or acts for performing the claimed function.

If applicant does **not** wish to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to amend the claim so that it will clearly not be a means (or step) plus function limitation (e.g., deleting the phrase "means for" or "step for").

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 74, 65, 66, and 69-71** are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 4,910,932 issued to Honigman (Honigman).

Regarding claim 74, Honigman discloses a modular structure (See Figures 1-19) for receiving and transporting individuals or equipment (Understood that the structure disclosed by Honigman is capable of receiving and transporting individuals or equipment), comprising: a first frame (See Figure 2, elements 40A, 40B, 42A & 42B) formed from a plurality of tubular frame portions (4" x 4" box tubing); a first shell formed from a plurality of armored panels (Figures 1 & 2, elements 12, 14, 16, 18, 22, 24, 30, 32, 34, & 36, note that the term "armored" does not imply any specific structure other than something that prohibits passing of a projectile or weapon of any type); the first frame, extending around the exterior of the first shell (See Figure 1), and first shell forming a first modular section having a bottom surface, a top surface and at least three sides (See Figure 1), each of the armored panels being formed of a single panel forming the first shell and forming at least a portion of the interior surface and exterior surface of the first modular section having no void between the interior surface and exterior surface (In view of Figure 2, there are no gap), the first modular section being a

center unit (See Figure 14, section immediately adjacent to figure reference); first coupling means arranged on the first modular section and configured for joining the first modular section with at least one other modular section (See Figures 16A, 17A, & 18); a second frame formed from a plurality of flame portions; a second shell formed from a plurality of armored panels; the second frame, extending around the exterior of the second shell, and second shell forming a second modular section having a bottom surface, a top surface and at least three sides, each of the armored panels being formed of a single panel forming the second shell and forming at least a portion of the interior and exterior surface of the second modular section having no void between the interior surface and the exterior surface; and second coupling means arranged on the second modular section and configured for joining the second modular section to at least the first modular section (See Figures 13-15, the structures are the same as detailed above and connected to one another by bolts as shown in Figures 16A, 17A, & 18); a third flame formed from a plurality of flame portions; a third shell formed from a plurality of armored panels; the third frame, extending around the exterior of the third shell, and third shell forming a third modular section having a bottom surface, a top surface and at least three sides, each of the armored panels being formed of a single panel forming the first shell and forming at least a portion of the interior surface and exterior surface of the first modular section having no void between the interior surface and exterior surface; third coupling means arranged on the third modular section and configured for joining the third modular section with at least one other modular section (See Figures 14-15, the structures are the same as detailed above and connected to

one another by bolts as shown in Figures 16A, 17A, & 18); the second and third modular sections being removably connected to the center unit (The bolts can be removed to take the structure apart) and protruding outward from the center unit (See Figures 14-15), the second and third sections being substantially perpendicular to each other (See Figures 14-15).

Regarding claim 65, Honigman further discloses wherein a portion of the armored panels are removable from an interior of the modular structure to form ports (See Figure 2, Elements 12 & 14).

Regarding claim 66, Honigman further discloses wherein the modular sections are removable from the modular structure and configured to be joined with at least a third modular section to form a second modular structure (See Title, "modular", understood that the units can be joined together to form a variety of different configurations).

Regarding claim 69, Honigman further discloses wherein the armored panels abut each other (See Figure 1, interior of the structure).

Regarding claim 70, Honigman further discloses wherein at least a portion of one of the modular sections is configured to be removed from the modular structure to form a port in a side portion of the modular structure (See Figure 2, the panels can be removed).

Regarding claim 71, Honigman further discloses wherein at least one of the modular sections includes an attachment area (The top and sides are capable of having

weaponry or a crane mounted thereon) for mounting at least one of weaponry and a crane.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 85-87** are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,910,932 issued to Honigman (Honigman).

Regarding claims 85-86, the terms "command center" and "telecommunications center" do not define any structure but merely imply an intended use.

See MPEP § 2114 which states:

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ 2nd 1647

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. In re Danly, 120 USPQ 528, 531.

Apparatus claims cover what a device is not what a device does. Hewlett-Packard Co. v. Bausch & Lomb Inc., 15 USPQ2d 1525, 1528.

As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

Regarding claim 87, Honigman discloses wherein the modular structure is capable of being formed into a cross shape (See Disclosure and Figures 14-15). In reference to Figures 14-15, it would have been obvious to include two additional units to

the remaining open sides of the unit depicted in the upper right hand corner of the figures to form a plus sign or cross-shape configuration.

4. **Claims 67-68** are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,910,932 issued to Honigman (Honigman) in view of U.K. Patent Application G.B. 2,345,069 by Skottowe (Skottowe).

Regarding claim 67-68, Honigman discloses the claimed invention except for the armored material comprising a fiber-reinforced polymer that is a para-aramid polymer. Skottowe discloses a modular structure that uses panels formed from Kevlar (See Page 3, Lines 7-10), which according to the applicant in paragraph 0034 of the instant specification, is a polymer reinforced with a para-aramid fiber, among other suitable materials to provide protection. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the specific material as indicated above, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 1125 USPQ 416.

5. **Claims 58-59** are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,910,932 issued to Honigman (Honigman) in view of U.S. Patent 4,593,498 issued to Stauss et al (Stauss) and further in view of U.K. Patent Application G.B. 2,345,069 by Skottowe (Skottowe).

Regarding claim 58-59, Honigman discloses the claimed invention except for the armored material comprising a fiber-reinforced polymer that is a para-aramid polymer. Skottowe discloses a modular structure that uses panels formed from Kevlar

(See Page 3, Lines 7-10), which according to the applicant in paragraph 0034 of the instant specification, is a polymer reinforced with a para-aramid fiber, among other suitable materials to provide protection. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the specific material as indicated above, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 1125 USPQ 416.

6. **Claims 52, 53, 56, 57, 60, 61, and 80-84** are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,910,932 issued to Honigman (Honigman) in view of U.S. Patent 4,593,498 issued to Stauss et al (Stauss).

Regarding claim 52, Honigman discloses a modular structure for receiving and transporting individuals or equipment, comprising: a frame formed from a plurality of tubular frame portions, wherein the tubular frame portions are discrete and separable; and a shell formed from a plurality of abutting armored panels, the frame and shell configured to form an elongate shape with a first end area and an opposite second end area, each of the abutting armored panels formed of a single piece and forming at least a portion of an interior surface of the modular structure and an exterior surface of the modular structure having no void between the interior surface and exterior surface, each of the frame portions being secured to at least one of the armored panels to form discrete units, the units being arranged to form the modular structure, the modular structure including a first unit and a plurality of second units, the second units being removably connected to the first unit and protruding from the first unit, at least two of the

second units being substantially perpendicular to each other, and the first and second units being configured to be separated to disassemble the modular structure.

Honigman does not disclose at least one of the units having a hinged configuration to form an entry point of the modular structure, the entry point forming an opening in the modular structure that encompasses substantially all of the first end area.

Stauss discloses at least one of the units having a hinged configuration to form an entry point of the modular structure, the entry point forming an opening in the modular structure that encompasses substantially all of the first end area (Figure 2-4 & 7, element 6).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the teachings of Honigman to provide a modular building structure with the teachings of Stauss to provide a folding door at an end of the structure for entry into the structure. The suggestion/motivation for doing so would have been to provide an alternative style or door and location for door to provide an entry point in the structure to allow for a greater range of configurations of the modular building units.

Regarding claim 53, Honigman further discloses wherein the modular structure comprises means for joining with another modular structure to form a larger modular structure (See Figures 14-15, the structures are the same as detailed above and connected to one another by bolts as shown in Figures 16A, 17A, & 18).

Regarding claim 56, Honigman further discloses wherein a portion of the armored panels are configured to be removed from an interior of the modular structure to form ports (See Figure 2, Elements 12 & 14).

Regarding claim 57, Honigman further discloses wherein the units are configured to be removed from the modular structure and joinable with another modular structure (See Title, "modular", understood that the units can be joined together to form a variety of different configurations).

Regarding claim 60, Honigman further discloses wherein at least one of the units is configured to be removed from the modular structure to form a port in a side portion of the modular structure (See Figure 2, Elements 12 & 14).

Regarding claim 61, Honigman further discloses wherein at least one of the units includes an attachment area (The top and sides are capable of having weaponry or a crane mounted thereon) for mounting at least one of weaponry and a crane.

Regarding claim 80, Honigman further discloses wherein the first unit is a central unit (See Figure 14-15, the elements can be arranged in a plus sign or cross-shaped configuration with a central unit). In reference to Figures 14-15, it would have been obvious to include two additional units to the remaining open sides of the unit depicted in the upper right hand corner of the figures to form a plus sign or cross-shape configuration.

Regarding claims 81-82, the terms "command center" and "telecommunications center" do not define any structure but merely imply an intended use.

See MPEP § 2114 which states:

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ 2nd 1647

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. In re Danly, 120 USPQ 528, 531.

Apparatus claims cover what a device is not what a device does. Hewlett-Packard Co. v. Bausch & Lomb Inc., 15 USPQ2d 1525, 1528.

As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

Regarding claim 83, Honigman discloses wherein the modular structure is capable of being formed into a cross shape (See Disclosure and Figures 14-15). In reference to Figures 14-15, it would have been obvious to include two additional units to the remaining open sides of the unit depicted in the upper right hand corner of the figures to form a plus sign or cross-shape configuration.

Regarding claim 84, Honigman further discloses wherein the plurality of second units includes at least four units (It is understood that any number of units can be attached to the structures to form a larger modular structure). In reference to Figures 14-15, it would have been obvious to include two additional units to the remaining open sides of the unit depicted in the upper right hand corner of the figures to form a plus sign or cross-shape configuration.

7. **Claims 54, 55, and 64** are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,910,932 issued to Honigman (Honigman) in view of U.S. Patent 4,593,498 issued to Stauss (Stauss) and further in view of U.S. Patent 7,210,707 issued to Scroth (Scroth).

Regarding claims 54, 55, and 64, Honigman or Honigman as modified by Stauss does not disclose a seat having a four point harness secured within the modular structure.

Scroth teaches floor mounted helicopter seats having a four point harness. All of the component parts are known in Honigman, Stauss, and Scroth. The only difference is the combination of the "old elements" into a single device by mounting them into the modular structure. Thus it would have been obvious to one having ordinary skill in the art to secure the seats within the modular structure, since the operation of the seat is in no way dependent on the operation of the other equipment of the structure to achieve the predictable results of the individual elements.

Response to Arguments

8. Applicant's arguments, see appeal brief, filed 24 November 2009, with respect to the rejection(s) of the claims under 35 USC 102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of new art that was brought to the attention of the examiner by the supervisor during review of the appeal brief.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan C. Weber whose telephone number is (571)270-5377. The examiner can normally be reached on Monday-Friday 7:30AM-4:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on (571)272-6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael J. Carone/
Supervisory Patent Examiner, Art Unit 3641

/J. C. W./
Examiner, Art Unit 3641